In the High Court of Punjab and Haryana, Chandigarh.

CWP No. 14659 of 2007

Date of Decision: 5.11.2007

Ex. Head Constable Tara Singh

....Petitioner

Versus

State of Punjab and others.

....Respondents.

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice Sham Sunder.

Present: Mr. P.L. Singla, Advocate
for the petitioner.

Mr. B.S. Chahal, AAG, Punjab
for the respondents.

...

J.S. Khehar, J.(Oral).

Through the instant writ petition, the petitioner has impugned the order dated 15.1.2007, whereby the Senior Superintendent of Police, Moga, having invoked Clause (b) of the 2nd proviso to Article 311(2) of the Constitution of India, has inflicted the punishment of dismissal from service, on the petitioner. The petitioner filed an appeal against the order dated 15.1.2007. The appeal preferred by the petitioner was also dismissed by the Deputy Inspector General of Police, Ferozepur Cantt. by an order dated 14.7.2007. The appellate order has also been impugned by the petitioner.

The factual position narrating the delinquency committed by

the petitioner on the basis of which the Senior Superintendent of Police, Moga, invoked Clause (b) of the 2nd proviso to Article 311(2) of the Constitution of India, is narrated in the opening paragraph of the impugned order dated 15.1.2007. The factual position pertaining to the alleged misconduct committed by the petitioner expressed in the opening paragraph of the impugned order dated 15.1.2007 is extracted hereunder:-

> "A case FIR No.276 dated 13.12.2006 u/s 354, 323 IPC PS Dharamkot has been registered against Head Const. Tara Singh No.696/Moga on the allegations that while he was posted at PP Kishan Pura (PS Dharamkot) on 6.12.2006 at 8.30 PM, he went to the Civil Hospital, Dharamkot in a drunkard condition and eve-teased with Smt. Sunita Rani w/o Sh. Kulwant Rai R/o Nurpur PS Dharamkot who (the husband of Smt. Sunita Rani) was met with an accident and admitted in Civil Hospital Dharamkot for treatment. Smt. Sunita Rani opposed this but HC Tara Singh No.696/Moga insulted her with the bad intention and scratched her mouth."

In the appellate order passed on 14.7.2007, the aforesaid factual position pertaining to the delinquency committed by the petitioner stands reiterated in the following words:-

> "Brief facts are that a case was registered vide FIR No.276 dated 13.12.2006 under Sections 354/323 IPC Police Station, Dharamkot on the statement of Kulwant Rai son of Chaman Lal caste Khatri, resident of Nurpur Dharamkot, against Head Constable Tara Singh No.696 Moga. Kulwant Rai was doing the job of driver on the Tempo travel. Due to accident of

> Tempo Travel on 5.12.2006 he received injuries and he was admitted in Civil Hospital, Dharamkot. His wife Sunita Rani was taking care of him in the hospital. On 6.12.200 Civil Hospital in drunkard condition and started teasing his wife Sunita Rani by holding her from arm. On the protest and with the intention to insult her she scratched nails on her mouth. Complainant Kulwant Rai raised hue and cry and got released his wife. The punishing authority held that keeping in view the misbehaviour of the appellant and the facts on the file and perusal of the record that the appellant was a member of disciplined force and thus his offence is liable to be punished. Departmental enquiry will consume much time. Therefore, due to this accused is dismissed from the police service under Article 311 (2) (b) w.e.f. 15.1.2007."

Even the averments made in the written statement, specially paragraph 13 thereof, reveal the basis of the action taken against the petitioner. Paragraph 13 of the written statement is also being extracted hereunder:-

> "That the contents of this para are denied being incorrect and misleading as the petitioner has been dismissed from service under Article 311(2)(b) of the Constitution of India on the basis of allegations made by a complainant and registration of a case FIR No.276 dated 13.11.2006 u/s 354/323 IPC PS Dharamkot. Since the competent authority i.e. the then Superintendent of Police Moga was satisfied that it is not in the public interest to retain the petitioner in service at public expense and to public detriment, and it is not reasonable to hold a regular enquiry

> against the petitioner. So charges have been framed after going through the facts of the case and after dispensing with enquiry for valid reasons. The action under Article 311(2)(b) of the Constitution of India was taken against the petitioner by virtue of powers conferred by the said provisions of law."

The order dated 15.1.2007 narrates, that it is not in "public interest" and that, it is not "desirable to retain" the petitioner in service as the same would be to "public detriment", that the said order was passed against the petitioner. The petitioner according to the punishing authority, deserved "no sympathy or pity". While rejecting the appeal preferred by the petitioner, the claim of the appellant was disposed of , by recording the following reasons:-

> ".....In the appeal and oral submissions he did not submitted any strong evidence. Therefore, after considering the appeal of the appellant I dismiss it and upheld the order passed by S.S.P., Moga."

A perusal of the stance adopted by the appellate authority reveals, that the petitioner did not substantiate his claim on the basis of any worthwhile evidence.

The only issue that needs to be adjudicated upon while determining the validity of the orders dated 15.1.2007 and 14.7.2007 is, whether or not, in the facts and circumstances of the instant case, it was open to the authorities to invoke Clause (b) of the 2nd proviso to Article 311(2) of the Constitution of India ? A perusal of Article 311(2) of the Constitution of India reveals, that an order of dismissal or removal or reduction in rank can be passed against a civil servant only after an enquiry

is conducted against him, wherein he has been informed of the charges levelled against him, and he has been afforded a reasonable opportunity to defend himself. The 2nd proviso to Article 311(2) of the Constitution of India lays down three exceptions, one of them being the one which has been invoked in the present case. Clause (b) of the second proviso under Article 311(2) of the Constitution of India which has been invoked against the petitioner, is extracted hereunder:-

> "(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry;"

A perusal of the aforesaid provision reveals, that the holding of an enquiry can be dispensed with in a situation wherein "it is not reasonably practicable to hold such enquiry". Having perused the allegations levelled against the petitioner for taking the impugned action narrated in the order passed by the punishing authority dated 15.1.2007, as well as, in the order of the appellate authority dated 14.7.2007, and even now in paragraph 13 of the written statement, we are satisfied, that the factual basis of taking the impugned action against the petitioner could have easily been determined through a regular departmental enquiry. In view of the factual position narrated in the impugned orders referred to hereinabove, it cannot be stated, that it was reasonably not practicable to hold such an enquiry. For the reasons recorded hereinabove, we are satisfied, that the order passed by the punishing authority dated 15.1.2007, as well as, by the appellate authority dated 14.7.2007 deserve to be set aside. The same are, accordingly, set aside.

Needless to mention, that it will be open to the respondents to hold a regular departmental enquiry against the petitioner on the allegations contained in the impugned order dated 15.1.2007, as well as, the appellate order dated 14.7.2007.

When notice of motion was issued, this Court passed the following order on 20.9.2007:-

> "Learned counsel for the petitioner has first of all invited our attention to clause (b) under the second proviso to Article 311 (2) of the Constitution of India, in order to assert that a regular departmental inquiry can be dispensed with only in circumstances where it is not reasonably practicable to hold such inquiry. Additionally, learned counsel for the petitioner has invited our attention to the facts narrated in the orders dated 15.1.2007 (Annexure P1) and 14.7.2007 (Annexure P5), in order to assert that the facts on the basis of which the petitioner has been punished cannot be considered as facts on which it is not reasonably practicable to hold a regular departmental inquiry.
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> Notice of motion.
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> On our asking, Mr.Gurminder Singh, Addl. Advocate General, Punjab, accepts notice on behalf of respondent Nos. 1 to 3.
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> Learned counsel for the respondents seeks an adjournment so as to enable him to seek instructions in the matter. Prayer is allowed.
>
> List again on 4.10.2007. Be shown in the urgent list."

While effecting service on the respondents through the learned counsel

representing them in this Court, the basis of passing the order was fully explained. Learned counsel for the respondents was, accordingly, required to seek instructions in the matter. Rather than obtaining instructions, when the matter came to be taken up on 4.10.2007, it was insisted upon by the learned counsel for the respondents, that a detailed written statement was required to be filed in the matter. This factual position stands noticed in our order dated 4.10.2007, which is also being extracted hereunder:-

> Through the instant writ petition the petitioner has impugned the order dated 14.7.2007, wherein the respondents have invoked clause (b) under the second proviso to Article 311(2) of the Constitution of India, for inflicting punishment on the petitioner without holding a regular departmental enquiry. The reasons for not holding a regular departmental enquiry are recorded in the impugned order dated 14.7.2007.
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> Despite the fact that the issue canvassed by the petitioner is a pure question of law, learned counsel for the respondents states, that it is necessary to file a detailed written statement to controvert the factual position narrated in the pleadings of the writ petition.
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> Conceding the insistence at the hands of the learned counsel for the respondents, the respondents are allowed to file written statement. The same be filed within two weeks with a copy in advance to the learned counsel for the petitioner.
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> List again on 29.10.2007. Be shown in the urgent list."

A joint written statement on behalf of the respondents, dated 22.10.2007 was, accordingly, filed. Having perused the same, we find nothing therein

which controverted the factual position narrated in the writ petition, or answered the legal query posed by us in our order extracted hereinabove. Even today, before the matter was taken up for final disposal, learned counsel for the respondents sought a pass-over so as to enable him to obtain instructions. Yet again, without controverting either the factual or legal position, it is insisted, that the matter be disposed of on merits.

Undoubtedly, it is our responsibility to adjudicate upon matters by passing well reasoned speaking orders. It is, therefore, that an order has been passed on the merits of the claim raised by the petitioner. The instant case is, however, a case wherein there was a glaring legal flaw in the impugned order. The action taken against the petitioner under clause (b) of the 2nd proviso to Article 311(2) of the Constitution of India, was clearly untenable. Despite the apparent flaw in the impugned order, the respondents have required this Court to pass a speaking order. Such an order, as stated hereinabove, has been passed, but precious Court time has been wasted on account of the adamant attitude of the respondents. In view of the above, we consider it just and appropriate to impose costs on the respondents. The instant writ petition is, accordingly, allowed with costs, quantified at Rs.10,000/-.

Disposed of accordingly.

(J.S. Khehar)
Judge.

(Sham Sunder)
Judge.

5.11.2007
sk.